

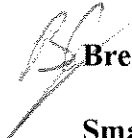
# Administrative Office of the Courts

## MEMORANDUM

Chief Justice Richard C. Howe  
Chairman, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

**To:** Julia D'Alesandro, Internal Auditor

**From:**  Brent Johnson, General Counsel

**Re:** Small Claims Collections

**Date:** August 7, 2001

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This memorandum is in response to the two questions that you have asked concerning the collection of small claims judgments. The first question concerns the role of a court in collecting and disbursing small claims judgments. The second question involves referring to small claims judgments as victim restitution. I will deal with these issues in order.

After a small claims judgment is entered, the court should not be an active participant in collecting small claims judgments, and then holding and disbursing the collected funds. The reason for this is found from the courts inherent role as neutral arbiter. A court's role in civil cases is first to determine liability. After liability is determined, the court's role is to provide mechanisms for a plaintiff to collect a judgment, and to resolve any disputes that arise concerning the means of collection. If the court takes an active role in "prosecuting" the claim, the court loses its independence and impartiality. For example, if the court initiates, on its own motion, a writ of garnishment and a dispute arises as to whether the funds are exempt, the court's ability to impartially decide the issue is called into question. Once a judgment has been obtained, a plaintiff has the right to pursue the judgment, settle the judgment, or take any other actions that the plaintiff feels is appropriate. The court should not undertake any of the rights or obligations possessed by a plaintiff.

The second question involves referring to a civil judgment as "victim restitution." This would be an improper reference. Victims rights have achieved constitutional status in recent years. The Utah Code, at § 77-37-2(3) defines a victim as "a person against whom a crime has allegedly been committed." Referring to a judgment creditor as a victim assigns rights to which the person is not entitled, and could diminish the importance status achieved by true crime victims. The Rules of Civil Procedure should be followed in referring to judgments as such, and referring to the parties as judgment creditor and judgment debtor.

Please let me know if you have any additional questions about these issues.

**The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.**